

COUNTY OF LOUDOUN
DEPARTMENT OF PLANNING
MEMORANDUM

DATE: January 23, 2009
TO: Loudoun County Planning Commission
FROM: Michael Elabarger, Project Manager
SUBJECT: **January 29, 2009 Committee of the Whole**
ZCPA 2007-0005, Loudoun Valley Estates II

BACKGROUND

Loudoun Valley Associates (i.e., Toll Brothers) has submitted an application to amend the concept plan and proffers approved with ZMAP 2002-0011, Loudoun Valley Estates II, as amended by ZCPA 2006-0007, Loudoun Valley Estates II, in order to remedy several inconsistencies that now exist after both the passing of time and further engineering study has been performed.

The property is zoned PD-H4 (Planned Development Housing) and is subject to the Revised 1993 Zoning Ordinance. It is partially located within the AI (Airport Impact) Overlay District, outside of but within one (1) mile of the Ldn 60 aircraft noise contour, and is also located partially within the FOD (Floodplain Overlay District). See Attachment (1.) for location. The area is governed by the policies of the Revised General Plan, the Revised Countywide Transportation Plan, and the Bicycle and Pedestrian Mobility Master Plan, which designate this area for both Residential and Industrial uses.

The application can be broken down into the following five (5) elements:

- (1.) Road Alignments – Realign road layouts on the Concept Development Plan (CDP, see Sheets 5 and 7) to be consistent with the alignments for Loudoun County Parkway and Creighton Road that have been completely engineered and are currently under review (and near approval) by the County's Department of Building and Development per CPAP 2007-0110 and CPAP 2006-0004;
- (2.) Floodplain Limits – Redefine the limits of the 100-year floodplain on the Concept Development Plan (CDP, see Sheets 6 and 7) to be consistent with the exact limits as defined by a much more accurate and engineered floodplain alteration study (FPST 2002-0015) approved by the County's Department of Building and Development;

- (3.) Floodplain Buffer – Per FPST 2002-0015 (noted above), permit encroachments of no more than 25 feet, and a total encroachment of no more than one (1) acre, of the floodplain's 50-foot management buffer in approximately 10 locations, compensated with adjacent or downstream reforestation plantings (see attached Reforestation Exhibits #1 and #2 and proffer (VII.H and VII.J));
- (4.) Road Connections –
 - (a.) On the Concept Development Plan (CDP) and through deletion of proffer (V.I), remove a proffered interparcel road connection between Land Bay 5 and the adjacent portion of Brambleton, which did not build a stub road to connect to, and;
 - (b.) Add a second entrance on Creighton Road for Land Bay 5 to replace the interparcel connection noted above.
- (5.) Land Bay 4R/3b Configuration – Make minor adjustments to the land bay configurations due to engineered street designs, adjustments to the floodplain limits, and alignment of Loudoun County Parkway that weren't known at time of rezoning. Land Bay 4R (zoned PD-H4, administered as PD-CC-CC, community commercial center) maintains the same approved size (10 acres) and floor area (100,000 sq.ft.), and Land Bay 3b (zoned PD-H4, administered as R-16, residential) does not gain, or change, the number of approved residential units.

NOTE: Just prior to the Planning Commission Public Hearing on June 19th, 2008, the applicant removed the three (3) zoning modifications regarding the retail Land Bay 4R from the application.

PLANNING COMMISSION ISSUES

The Planning Commission held a public hearing on the application on June 19, 2008; no members of the public spoke regarding the application. The Commission identified a number of issues to be addressed, with the **current STATUS in bold**, including:

1. Provide further information and graphics depicting the exact areas where the 50-foot management buffer would be impacted – **OUTSTANDING – the applicant is expected to have graphics or provide further information.**
2. Show how the reconfiguration of Land Bay 4R affects and treats the existing cemetery – **OUTSTANDING – the applicant is expected to have graphics or provide further information.**
3. Provide detail and graphics of the reforestation plan the applicant has prepared that mitigates many Staff issues – **RESOLVED; Sheet 7 of CDP plat set identifies areas of reforestation; Proffer VII.J provides detail. Staff can provide copies of reforestation plan upon request, and a copy will be at the work session for review.**

The Commission voted 7-0-2 (Commissioners Klancher and Brodrick absent) to forward the application to a future Committee of the Whole meeting for further discussion.

In follow-up discussions with members of the Commission, the applicant has also been asked to:

4. Demonstrate that increased erosion/sedimentation would not occur due to the management buffer encroachments – **OUTSTANDING – the applicant will address this at the work session.**
5. Identify the 'stream corridor elements' referenced by Plan Policy that the management buffer is intended to protect – **RESOLVED (provided by Staff) – the elements are the rivers, streams, floodplains, adjacent steep slopes, wetlands, riparian forests, historical and archaeological sites.**
6. Provide the reforestation planting rates and the expected survival rates of those plantings – **PARTIALLY RESOLVED – Proffer VII.J, Broad Run Reforestation, notes "initial stocking rates sufficient to maintain a rate of at least 400 stems per acre...". The applicant will provide further information at the work session.**
7. Provide the soil types and structures of the requested encroachment areas – **PARTIALLY RESOLVED – See Sheet 11; the applicant will provide further detailed information at the work session.**
8. Provide the adjoining land uses/zoning of land near each of the management buffer encroachments – **RESOLVED (provided by Staff) – the entire area of ZCPA is zoned residentially PD-H4, administered as R-8 or R-16.**

STAFF ISSUES

During meetings since the Public Hearing, Staff requested the applicant provide a comprehensive list of wetland mitigation banks in Loudoun County, including their costs/rates, as well as those in Prince William and other surrounding Counties, and detail the cost differentials between the Counties and the individual wetland banks. This has not been submitted to date.

The following outstanding staff issues are summarized from the public hearing Staff Report, with the **current STATUS in bold**:

1. 50-foot Management Buffer - Maintain full 50-foot buffer as it has not been demonstrated that a reduction does not adversely impact the stream corridor elements. **RESOLVED with Reforestation Exhibits #1 and #2 and Proffers VII.H and VII.J.**
2. Access to western portion of Stream Valley Park – Maintain the Creighton Road ROW for future access to Broad Run Stream Valley Park. **RESOLVED with Proffer VI.B.5.**

3. Sheet 10, Minimum Lot Requirements, PD-CC(CC) District – Revise the Minimum Lot Requirements chart for Land Bay 4R. **RESOLVED with revisions.**
4. Access to Public Use Site – Clarify access to Public Use site in the southeastern portion of property. **RESOLVED with Proffer VI.B.4, Proffer VI.B.5, and additional staff negotiations with the adjacent property owners outside of this ZCPA application process.**
5. Screening Requirements – Regarding proposed Zoning Modification (ii.). **RESOLVED with removal of zoning modification requests for commercial Land Bay 4R.**
6. Proffer VII.E.2 Clarifications – **RESOLVED by removing this proffer language and replacing with Proffer VII.H and VII.J.**
7. Reforestation/planting mitigation Plan / Proffer VII.E.2 and VII.E.3 – Discussion of appropriate language continued. **RESOLVED by removing this proffer language and replacing with Proffer VII.H and VII.J.**
8. Proffer VII.H – Clarify language. **RESOLVED with new proffer language in Proffer VII.H and VII.J.**
9. Zoning Modifications – Staff must review illustrative layout and design of Landbay 4R. **RESOLVED with removal of zoning modification requests for commercial Land Bay 4R.**

PROGRESS SINCE PUBLIC HEARING

Approximately seven months has passed since this application was heard at the Public Hearing. In that time, the applicant has done the following:

- Gained approval by the Virginia Department of Environmental Quality (DEQ) in August 2008, and the U.S. Corps of Engineers (USCOE) in September 2008, for the “Conceptual Compensatory Mitigation Plan” for both wetland and stream impact mitigation for Loudoun Valley Villages (aka, LVE II), revised dated July 7, 2008.
- Gained approval by the Virginia Department of Environmental Quality (DEQ) for the “Major Modification of Virginia Water Protection (VWP) Individual Permit # 00-0872”, on August 7, 2008.
- Revised the proffer statement for this application several times in response to staff comments; the current version is included as Attachment 5, dated January 22, 2009.

As previously noted, all of the Staff outstanding issues from the public hearing staff report have been resolved with subsequent changes. Below is a description and assessment of two associated actions that transpired since the Public Hearing.

“Conceptual Compensatory Mitigation Plan” for Loudoun Valley Villages, dated February 1, 2008 and revised July 7, 2008.

This plan, to be referred to simply as the ‘reforestation plan’, was born of a proffer obligation (Proffer VII.E, Potential Replanting Areas) by Toll Brothers from the original rezoning (ZMAP 2002-0011). That proffer called for some reforestation of perimeter areas along the floodplain limits. The applicant, in a cooperative effort with the USCOE, DEQ, and County Department of Parks, Recreation and Community Services (PRCS), undertook a much larger, comprehensive reforestation project (which totals approximately 35 acres of area) that would provide stream restoration and reforestation to portions of the current barren sod field within the 100-year floodplain, much of which is adjacent or part of the 131 acres to be donated to the County to become the Broad Run Stream Valley Park. This reforestation plan, by itself, is a voluntary effort by the applicant – but would satisfy the existing proffer – that exceeds their currently proffered commitments for replantings, and was being formulated outside the realm of this current ZCPA application.

In the review of this ZCPA application, with Staff knowledge – and support – of this reforestation plan, the applicant was asked to commit to that reforestation plan in the revised proffer statement for this application. The applicant was willing to do so, but had to wait until that plan was approved by the USCOE before it could commit to them for this application. With that plan approved on August 7, 2008, and now committed to in Proffer VII.J, Staff is satisfied that the greater result of that reforestation plan will more than off-set the proposed limited encroachments into the 50’ management buffer (element #3 of this application).

The applicant could, in the future, take “credit” or compensation for ‘stream mitigation credit units’ through the build-out of the reforestation plan for stream impacts they do elsewhere in the same hydrologic unit. With future USCOE or DEQ approvals, the applicant could possibly sell ‘credits’ for stream mitigation to others, in much the same manner the applicant has purchased mitigation credits for their wetland impacts at the bank in Prince William County.

During discussions, the question was raised of what would happen to the reforestation area if the applicant should go out of business or otherwise be unable to maintain the plantings. The applicant must bond the improvements in the reforestation plan and would be held by the standards of the subsequent permits received by the USCOE to perform monitoring for a seven-year period.

Proffer VII.I - Wetlands Mitigation (Virginia Water Protection (VWP) Individual Permit # 00-0872) / Wetlands Policy

One concern staff has with the application, which can be tied to element # 1 of this application¹, is regarding the location of wetland mitigation which has already

¹ The realignment of roads (element #1, Loudoun County Parkway) is the cause of some minor wetland impacts which are being mitigated with this permit, and therefore, are not consistent with this Plan policy. Staff acknowledges that the road realignments avoid possible greater impacts on the stream and wetland features in that vicinity, and credit the

been approved (08/07/08) by the above noted permit. The approved mitigation includes the purchase of 0.90 wetland credits (1 credit = 1 acre) at the Foggy Bottom Wetland Bank, Phase II, located in Prince William County and “conducting on-site enhancement of 2,958 linear feet of stream channel with preservation of 4.49 acres of associated riparian buffer, including 4.43 acres of which will receive heavy planting.” The stream mitigation is provided through the proffered reforestation plan. However, the location of wetland mitigation is inconsistent with the Revised General Plan, in Policy 23 on Page 5-11, which states that “the County will support the Federal goal of no net loss to wetlands in the County”. The County’s order of priority for the location of mitigation for these impacts is 1.) onsite, (2.) within the Broad Run Watershed (of the Transition Policy Area), (3.) within the Broad Run Watershed (outside the Transition Policy Area but within the County), and (4.) within the County.

Prior iterations of the applicant’s proffer statement contained a fifth option: *outside the County*. After discussion with Staff, the applicant changed the language in Proffer VII.I to include just the four options, all of which keep the mitigation within the County. However, this proffer, and the actions of the applicant, are not retroactive. The applicant has chosen not to change the location of the wetlands mitigation for Permit 00-0872. *Staff also acknowledges that, per ZMAP 2002-0011 or ZCPA 2006-0007, there was no proffer commitment to keep wetland mitigation within the County.*

The applicant has stated an economic hardship as to why they cannot meet the County policy and locate the mitigation within the County, citing an additional cost of \$10,000 to do so. Staff has inquired with the USCOE and DEQ, and has found that there is very little administrative action needed to change the location of the mitigation; therefore, it appears to be purely a monetary choice on behalf of the applicant. As previously noted, in late 2008, staff asked the applicant to provide full details and rates for the available wetland banks sites, and this information has not been provided to date.

CURRENT ISSUE STATUS

The applicant has addressed all previous staff issues with the changes and additions previously noted, but created a policy issue with the approved wetland impact permit that mitigates outside the County. The information regarding wetland bank sites has also not been provided to date.

Regarding the Planning Commission’s comments, the applicant must provide the outstanding requested information, either in writing or verbally at the work session, to the satisfaction of the Commission. The primary concern seems to be the potential impacts of the 50-foot management buffer encroachments.

Staff offers the following assessment:

- Regarding element #1 of this application, realignment of roads (Loudoun County Parkway in particular) – preference is for the wetland mitigation to be done within the

applicant for making efforts to minimize those impacts.

County, consistent with Plan policy; policy decisions are not based on economic impacts to the applicant. However, it would not be recommended to deny this application because of this, as the applicant has proffered to meet Plan policy for any future wetland impacts, and the overall benefits of the application exceed the loss of 0.90 acre of wetlands within the County.

- Regarding element #3 of this application, floodplain management buffer encroachments – the benefits of the reforestation plan more than make up for and mitigate any anticipated impacts of the minor encroachments into the flexible 50' management buffer of the 100-year floodplain. The applicant's neo-traditional street grid, mix of housing types/styles, and lot placements are encouraged and supported by the Plan, and together are an example of why the management buffer is meant to be flexible in order to accommodate innovative designs.
- The overall application can be supported, as it provides the following:
 1. *Proffer VI.B.4* – donation of an additional 4-acre parcel which connects the previously proffered 30-acre Public Use Site and the eastern side of the previously proffered 131-acre Broad Run Stream Valley Park with the Loudoun Reserve Drive bridge;
 2. *Proffer VI.B.5* – Creighton Road right-of-way access to the western side of the proffered Broad Run Stream Valley Park;
 3. *Proffer VI.B.3* – \$5,000 contribution for signage in the Broad Run Stream Valley Park;
 4. *Proffer VII.J* – Committing to fulfilling the reforestation plan, which would provide more intense replantings, enhanced water quality, a more stable floodplain, and an overall improved environment for Broad Run and the Broad Run Stream Valley Park over what is currently proffered.

STAFF RECOMMENDATION

An official recommendation will be provided at the January 29th work session.

Should the Planning Commission not support the application, and the Board of Supervisors deny the application in its' current form, the potential impact would be: the County loses any commitment that the reforestation plan will be implemented; the County loses the 4-acre park site and cash contribution for park signage; and access via the Creighton Road right-of-way could be lost, dependent on future actions.

Upon resolutions of all issues and concerns by the applicant, Staff could recommend the application be sent to the Board of Supervisors with a recommendation of approval, subject to the Proffer Statement dated January 22, 2009 and the attached Findings for Approval.

County staff from Community Planning, Building & Development-Environmental Review Team, and Parks, Recreation, and Community Services have been requested to attend the Committee meeting to answer questions.

MOTIONS

- 1.) I move that the Planning Commission forward ZCPA 2007-0005, Loudoun Valley Estates II, to the Board of Supervisors with a recommendation of approval, subject to the Proffer Statement dated January 22, 2009, and with the attached Findings for Approval.

OR,

- 2.) I move that the Planning Commission forward ZCPA 2007-0005, Loudoun Valley Estates II, to a future Committee meeting for further discussion.

OR,

- 3.) I move an alternate motion.

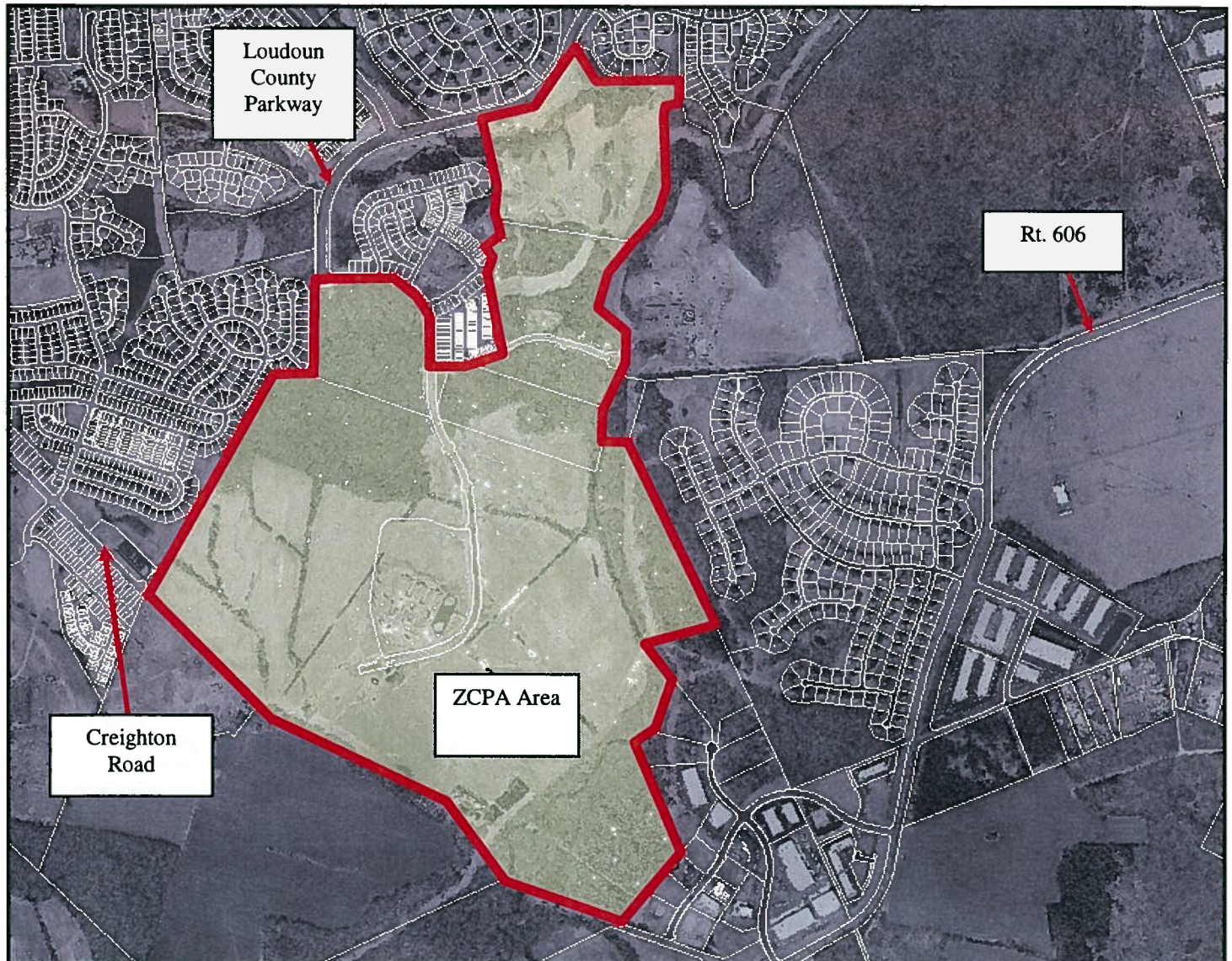
Attachments:

1. Vicinity Map.
2. Findings for Approval.
3. Letter, from Virginia Department of Environmental Quality (DEQ), RE: Notification of Public Notice of Draft Permit (VWP #00-0872).
4. Applicant Submission: Project Update letter, January 22, 2009.
5. Applicant Submission: Proffer Statement, dated May 2, 2008 and revised through January 22, 2009.
6. Applicant Submission: Reforestation Exhibits #1 and #2.
7. Applicant Submission: ZCPA Plat Set, dated June 22, 2007 and revised through October 29, 2008.

ATTACHMENT 1.

VICINITY MAP

The property is approximately 589 acres in size and is located south of Ryan Road (Route 772), north of Creighton Road (Route 774), south and east of Loudoun County Parkway (Route 1950), on both sides of Evergreen Ridge Drive, and west of Broad Run in the Dulles Election District.



Directions: Take Harry Byrd Highway (U.S. Route 7) east approximately 4.25 miles to Route 659, Belmont Ridge Road. Go south on Route 659 approximately 7.0 miles to Ryan Road (Route 772). Go east on Route 772 approximately 0.5 mile to Claiborne Parkway; head south on Claiborne approximately 0.5 mile to the site just south of the alignment of Loudoun County Parkway.

ATTACHMENT 2.

FINDINGS for APPROVAL

1. The proposed Concept Plan Amendment realigns Loudoun County Parkway and Creighton Road to their ultimate locations as desired by the County.
2. The proposed Concept Plan Amendment aligns the floodplain limits with the approved floodplain alteration study.
3. The proposed Concept Plan Amendment to reduce the 50-foot management buffer in approximately ten locations, with no encroachment more than 25', and a cumulative total area of encroachment of no more than one (1) acre, would not adversely impact the stream corridor elements.
4. The proposed Concept Plan Amendment removes a proffered interparcel road connection between Land Bay 5 and the adjacent portion of Brambleton, which did not construct a corresponding interparcel connection, and adds a necessary second entrance onto Creighton Road.
5. The proposed Concept Plan Amendment to change the configuration of Land Bays 4R and 3b to accommodate internal street alignments and connections altered by changes to the alignment of Loudoun County Parkway and the revised floodplain limits.
6. Commitment that any future wetland impacts will be mitigated according to County Policy.
7. Commitment to the preservation of the original right-of-way (ROW) of Creighton Road that will provide for a future public access point to the southwestern portion of the Broad Run Stream Valley Park.
8. Contribution of a four-acre parcel of land that will connect the previously proffered 30-acre Public Use Site and the eastern side of the previously proffered 131-acre Broad Run Stream Valley Park with the Loudoun Reserve Drive bridge built by the applicant.
9. Contribution of \$5,000 for signage with the Broad Run Stream Valley Park.
10. The proposed 50-foot management buffer encroachments are justified by:
 - a. The majority of locations are already denuded land used as sod farm and have been regularly fertilized for that purpose.
 - b. Several locations are within or adjacent the reforestation plan area for replantings, and will benefit from those replantings proffered with this application.

- c. The stated use within the encroachments is backyard lot lines, and not residences.
 - d. The planned locations of streets and houses were not moved closer to the 50-foot management buffer – the floodplain, through a finer level of engineering study, was found to actually be closer to those locations than known at the time of rezoning.
 - e. The planned grid-street layout and mix of housing style/type, supported by the Plan, would need to be changed to less-desirable curvilinear streets, or go through redesign that could reduce the applicant's ability to develop the approved number of units.
 - f. The overall benefits to the environment of the reforestation plan proffered with this application more than make up for the specified encroachments over the current level of replanting that is currently proffered.
11. The proposed reforestation plan being proffered to with this application is far more extensive and beneficial to the County than the level of replanting currently proffered from prior approvals for LVE II. The benefits include:
- a. A total acreage of reforestation of approximately 35 acres.
 - b. Reforestation of denuded areas between the 50' management buffer and the floodplain limits that were not previously proffered for replanting.
 - c. On-site mitigation of stream impacts elsewhere in the project, which meets the #1 Plan policy option for mitigation.
 - d. Planting rates for the survivability of 400 stems per acre, compared to 100 seedlings per acre (total, not for survivability) in previously approved proffer.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

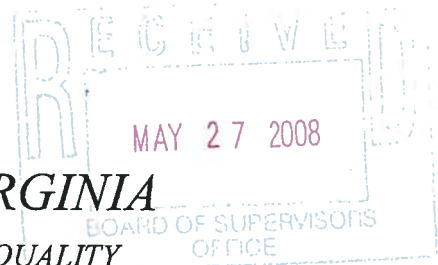
(703) 583-3800 Fax (703) 583-3801

www.deq.virginia.gov

Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director



May 23, 2008

Mr. Scott York
Chairman, Board of Supervisors
Loudoun County Board of Supervisors
1 Harrison Street, S.E., Fifth Floor
P.O. Box 7000
Leesburg, Virginia 20177-7000

RECEIVED

JUN 04 2008

BUILDING AND DEVELOPMENT

RE: Major Modification of Virginia Water Protection (VWP) Individual Permit Number 00-0872
Loudoun Valley Estates II, Loudoun County, Virginia
Notification of Public Notice of Draft Permit

Dear Chairman York:

The Department of Environmental Quality (DEQ) has received an application for a Virginia Water Protection (VWP) individual permit for the above-referenced project. Attached is a copy of the Public Notice for the proposed permit action for your review pursuant to Section 62.1-44.15:01 of the Code of Virginia. Notice of the proposed action will also be published in a newspaper circulated in the vicinity of the project site. The publication will establish a 30-calendar day public comment period for this proposal. If you wish to comment on this proposed action, please respond to DEQ at the above address.

If no response is received within the 30-day public comment period, DEQ will assume that you have no objections to the proposed action. If you have any questions, please contact me at 703-583-3892 or makuskie@deq.virginia.gov.

Respectfully,

Melissa Andersen Kuskie
VWP Permit Writer

Attachment: Public Notice

ATTACHMENT 3

Public Notice – Environmental Permit

PURPOSE OF NOTICE: To seek public comment on a draft permit modification from the Department of Environmental Quality that will allow an additional 0.73 acres of surface water impacts, consisting of 0.68 acres of permanent impacts and 0.05 acre of temporary impacts associated with continual construction of a residential community known as "Loudoun Valley Estates II" (new areas associated with this modification are known as "Loudoun Valley Villages") in Loudoun County, Virginia.

PUBLIC COMMENT PERIOD: MONTH DAY, YEAR to TIME p.m. on MONTH DAY, YEAR (REMINDER: THE 30-DAY COMMENT PERIOD STARTS THE DAY AFTER THE PUBLIC NOTICE IS PUBLISHED)

PERMIT NAME: Virginia Water Protection Permit issued by DEQ, under the authority of the State Water Control Board

NAME, ADDRESS AND PERMIT NUMBER OF APPLICANT: Loudoun Valley Associates, L.P. c/o Toll Brothers, Inc.; 43089 Ryan Road, Suite 101, Ashburn, Virginia 20148; Virginia Water Protection Individual Permit No. 00-0872

PROJECT DESCRIPTION: Loudoun Valley Associates, L.P. c/o Toll Brothers, Inc. has applied for a permit modification for the "Loudoun Valley Estates II" project (formerly known as "Loudoun Valley Preserve") in Loudoun County, Virginia. The project site is bordered to the north by Ryan Road (Route 772) and to the east by Broad Run. The permit modification will allow the inclusion of proposed impacts associated with the acquisition of an adjacent 386-acre parcel (known as "Loudoun Valley Villages," for additional residential community construction. The proposed changes will result in additional impacts to 0.73 acres of surface waters, consisting of 0.68 acres of permanent impacts and 0.05 acre of temporary impacts. Permanent impacts consist of 0.45 acre of palustrine forested wetlands (PFO) and 0.23 acre (1,278 linear feet) of stream channels. Temporary impacts consist of 0.05 acre (86 linear feet) of stream channel. The activity proposed in the permit will affect unnamed tributaries of Broad Run in the Potomac River watershed. A watershed is the land area drained by a river and its incoming streams. To compensate for the affected area, the applicant will purchase 0.90 wetland credits from the Foggy Bottom Wetland Bank, Phase II in Fauquier County, Virginia and conduct on-site enhancement of 2,958 linear feet of stream channel with preservation of 4.49 acres of associated riparian buffer, including 4.43 acres of which that will receive heavy planting. DEQ's preliminary decision is to approve the permit.

HOW TO COMMENT: DEQ accepts comments by e-mail, fax or postal mail. All comments must be in writing and be received by DEQ during the comment period. Written comments must include: 1) The names, mailing addresses and telephone numbers of the person commenting and of all people represented by the citizen. 2) If a public hearing is requested, the reason for holding a hearing, including associated concerns. 3) A brief, informal statement regarding the extent of the interest of the person commenting, including how the operation of the facility or activity affects the citizen. DEQ may hold a public hearing, including another comment period, if public response is significant and there are substantial, disputed issues relevant to the proposed permit. The public may review the draft permit and application at the DEQ office named below.

CONTACT FOR PUBLIC COMMENTS, DOCUMENT REQUESTS AND ADDITIONAL INFORMATION: MELISSA ANDERSEN KUSKIE; DEPARTMENT OF ENVIRONMENTAL QUALITY, NORTHERN VIRGINIA REGIONAL OFFICE, 13901 CROWN COURT, WOODBRIDGE, VIRGINIA 22193; PHONE: (703) 583-3892; E-MAIL: MAKUSKIE@DEQ.VIRGINIA.GOV; FAX: 703) 583-3841.

JEFFREY A. NEIN, AICP
(703) 456-8103
jnein@cooley.com

BY HAND DELIVERY

January 22, 2009

Michael S. Elabarger
Project Manager
Department of Planning
1 Harrison Street, S.E., 3rd Floor
Leesburg, Virginia 20177-7000

RE: ZCPA 2007-0005, Loudoun Valley Estates II
Application Update for Planning Commission Work Session

Dear Mike:

The purpose of this letter is to provide an update and clarification of the Application's scope for the Planning Commission work session on January 29th. It is important to remember that the genesis of the changes to major road alignments, floodplain limits, land bay configurations and access points, as reflected on the proposed Concept Development Plan ("CDP"), reside with the normal progression of detailed engineering that accompanies the preparation of construction plans and subdivision plans. The Application proposes no increase to the amount of development already approved for the Property.

As you know, the Applicant agreed to several significant revisions to the Application at the June 19, 2008 Planning Commission public hearing and since that time we have continued to work with staff on various proffer and plan revisions to implement the changes to the Application and to address additional staff comments. The Application has now been revised as follows:

1. All previously requested ZMODs for the Retail land bay, Land Bay 4R, have been removed from the Application.
2. A commitment to dedicate a 4-acre parcel to the County as an addition to the previously proffered 131-acre Broad Run Stream Valley Park has been added as Proffer VI.B.4.
3. A commitment to retain the Creighton Road prescriptive easement within the property, in order to maintain public access to the Broad Run Stream Valley Park from Loudoun County Parkway, has been added as Proffer VI.B.5.
4. Commitments to restrict the extent and control the timing of the proposed reductions of the 50-foot management buffer has been added to Proffer VII.H.
5. A commitment to follow a staff recommended hierarchy of wetland mitigation locations for any future wetland mitigation needs has been added to Proffer VII.I.

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6. A commitment to implement the reforestation planting program contained in the Applicant's Mitigation Plan and recommended by staff to replace the previously approved replanting proffer has been added as Proffer VII.J. and the reforestation areas have been added to Sheet 7 of the CDP.

The Application now is limited to the following elements:

1. CDP revisions to reflect and be consistent with the final road alignments designed for Loudoun County Parkway and Creighton Road (CPAP 2007-0110 and CPAP 2006-0004).
2. CDP revisions to reflect and be consistent with the floodplain limits defined by floodplain alteration study FPST 2002-0015.
3. CDP and proffer revisions to allow for minor reductions of the flexible 50-foot management buffer (reductions to no less than 25 feet in width and limited to a total area of no more than 1 acre) with the implementation of reforestation plantings on approximately 35 acres adjacent to Broad Run and associated drainageways, as permitted by the Revised General Plan.
4. CDP and proffer revisions for Land Bay 5 to reflect the removal of a proffered interparcel connection with Brambleton (no connection point was provided in Brambleton) and to add a second entrance on Creighton Road for Land Bay 5 (the two entrance locations have been approved by VDOT).
5. CDP revisions to reflect and be consistent with minor adjustments to the configurations of Land Bays 4R and 3b as depicted on preliminary subdivision plans in consideration of internal street alignments, street connections with Evergreen Ridge Drive, and the above-referenced plans for Loudoun County Parkway and the floodplain alteration.

The requested reductions of the flexible 50-foot management buffer are due in large part to the redefined floodplain limits, which are, in general, more extensive than those depicted on the original CDP approved with ZMAP 2002-0011 in April 2004 and have reduced the developable areas of the Property. It is noted that the Revised General Plan ("RGP") states that the recommended 50-foot management buffer is flexible and can be reduced if measures are taken to avoid impacts to other elements of the river and stream corridor resources. The pertinent portions of the RGP are presented below:

"The RSCOD contains rivers and streams draining 100 acres or more; associated 100-year floodplains; adjacent steep slope areas; a management buffer around floodplains and adjacent steep slopes; a minimum no-build stream buffer; and wetlands, riparian forests, and historic and archaeological site to the extent that they fall within the RSCOD. The 50-foot Management Buffer is flexible."

And from the River and Stream Corridor Resource Policies,

Michael Elabarger
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"5. The 50-foot Management Buffer can be reduced if it can be shown that a reduction does not adversely impact the other RSCOD elements, and that performance standards and criteria, developed as part of the implementation of the river and stream corridor policies, are met and maintained...."


The Applicant has agreed, with the encouragement of staff, to proffer the extensive (35 acres) and dense (survival rate of 400 stems per acre) reforestation plantings contained in its otherwise discretionary Mitigation Plan to ensure that the proposed reductions (no more than 1 acre total) of the flexible 50-foot management will not have any adverse impact on other Broad Run corridor resource elements. The public benefits of enhanced water quality, a more stable floodplain and an improved environment for the Broad Run that these proffer commitments will provide clearly advance the environmental policies of the RGP to a greater extent than the current conditions.

We look forward to a discussion of these matters at the January 29th Planning Commission work session.

Please do not hesitate to contact me if you have any questions or if you require any additional information.

Very truly yours,

Cooley Godward Kronish LLP



Jeffrey A. Nein, AICP
Senior Land Use Planner

Enclosures

cc: Alan Truitt, Toll Brothers, Inc.
Ron Snyder, Toll Brothers, Inc.
Jack Vega, P.E., ESE Consultants, Inc.
Mark Baker, Bowman Consulting Group, Ltd.
Antonio J. Calabrese, Esq., Cooley Godward Kronish LLP

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**LOUDOUN VALLEY ESTATES II
ZCPA 2007-0005**

PROFFER STATEMENT

~~May 2, 2008~~
January 22, 2009

Pursuant to Section 15.2-2303, Code of Virginia (1950), as amended, and Section 6-1209 of the Revised 1993 Loudoun County Zoning Ordinance~~(1993)~~, as amended (the "Zoning Ordinance"), Loudoun Valley Associates, L.P., the owner of the property identified as Loudoun County Tax Map 92, Parcels 19, 20 and 23 (PIN: 123-46-9478, 122-26-3229 and 122-46-6311), and Toll VA, L.P., the owner of the property identified as Loudoun County Map 92, Parcel 18 (PIN: 123-36-7324) (collectively, the "Owner") (all properties collectively referred to as the "Property"), on behalf of itself and its successors in interest, hereby voluntarily proffers that the development of the Property identified and labeled "ZCPA Area" on Sheet 4 of the ZCPA Plans, defined below, shall remain subject to the proffers, concept development plan and zoning ordinance modifications approved for ZMAP 2002-0011, Loudoun Valley Estates II, as amended by ZCPA 2006-0007, Loudoun Valley Estates II, except as amended below by amended Proffers I., V. I., VII.E.2., and VIII.D., and by new Proffers VI.B.~~3.~~, ~~VII.E.3.~~, 3. and 4., VII.H.~~and~~, VII.I., and VII.J., and by the Loudoun Valley Estates II Zoning Concept Plan Amendment Plans (the "ZCPA Plans") dated June 22, 2007, as revised through ~~May 2,~~October 29, 2008, prepared by Bowman Consulting Group, Ltd., and included by reference as Exhibit A. The ZCPA Area shall also be subject to the zoning ordinance ~~modifications described in Exhibit B attached hereto.~~amendments previously approved with ZMAP 2002-0011. It is further clarified that the proffers, concept development plan and zoning ordinance modifications approved for ZMAP 2002-0011, Loudoun Valley Estates II, as amended by ZCPA 2006-0007, Loudoun Valley Estates II, shall remain in full force and effect for the balance of the Loudoun Valley Estates II property rezoned by ZMAP 2002-0011.

All proffers made herein are contingent upon approval of ZCPA 2007-0005, including the ZCPA Plans,~~and the requested zoning ordinance modifications.~~

I. CONCEPT DEVELOPMENT PLAN

The development of the Property shall be in substantial conformity with the Concept Development Plan (the "CDP"), identified as Sheets 2, 4, 6 through 8, 10 and 11 (exclusive of the noted illustratives and typical sections) of the ZCPA Plans. Minor adjustments to the locations of the proposed uses, facilities and improvements shown on the CDP shall be permitted to address grading, drainage, environmental, cultural and natural features, development ordinance requirements, and other final engineering considerations, and to accommodate the recommendations of archaeological studies.

V. TRANSPORTATION

I. Interparcel Connection to Brambleton (DELETED)

VI. CAPITAL FACILITIES

B. Broad Run Stream Valley Park and Nature Trail

3. The Owner shall contribute \$5,000 to the County for the design, purchase, installation and maintenance of signage for the Broad Run Stream Valley Park. The contribution shall be paid to the County within 60 days of the approval of this Application. ZCPA 2007-0005.

4. In addition to the 131 acres referenced in paragraph 1 above, the Owner shall also dedicate to the County the 4 acre parcel identified on the CDP as PIN: 123-47-8380 for inclusion in the Broad Run Stream Valley Park. This parcel shall be dedicated to the County at the time the adjacent proffered park land is dedicated.

5. The existing prescriptive easement for the unmaintained portion of Creighton Road (Route 774) located to the east of the future Loudoun County Parkway right-of-way provides a means of public access to the Broad Run Stream Valley Park. The Owner shall not request the vacation of any portion of this existing prescriptive easement within the Property without first obtaining the consent of the Department of Parks, Recreation and Community Services.

VII. ENVIRONMENT

E. Potential Replanting Areas

~~2. The Owner shall utilize deciduous and evergreen native plant species, selected in consultation with the County's Urban Forester, at a rate of 250 seedlings per acre to replant denuded floodplain and 50 foot management buffer areas located within the Potential Replanting Areas shown on Sheet 7 of the CDP. Such plantings may be concentrated, dispersed or evenly distributed within the denuded floodplain and 50 foot management buffer areas located within the Potential Replanting Areas at the Owner's discretion in consideration of the location of planned improvements, infrastructure and existing vegetation. Where such plantings are concentrated, the planting rate shall not exceed 1,000 seedlings per acre. The plantings shall be done in conjunction with the development of adjacent areas and shall be installed prior to occupancy of such areas. No plantings shall be required in utility or storm water management easements.~~

~~3. At the option of the County at the time of site plan review, the Owner shall, in lieu of replanting the areas identified in paragraph 2 above, replant denuded areas adjacent to Broad Run with deciduous and evergreen native plant species, selected in consultation with the County's Urban Forester, at a rate of 400 seedlings per acre. The amount of acreage to be replanted shall be no less than the amount of acreage subject to paragraph 2 above. The location of the replanting areas and the timing of the plantings shall be coordinated with the County's Urban Forester.~~

2. (DELETED)

H. 50-Foot Management Buffer

The 50-foot management buffer areas shown on the CDP ~~may contain all compatible and~~ provided for the purpose of protecting River and Stream Corridor Resources shall be limited to the following uses identified in the Revised General Plan's policies for Natural Resource Assets, ~~such as, but not limited to, ponds;~~ (i) road, trail and driveway crossings, bridges, utilities and utility rights-of-way (only when the environmental objectives of the River and Stream Corridor Resources policies can be maintained or enhanced); (ii) local and regional stormwater

management facilities, ~~utilities, road crossings, bridges, paths and trails, and active and passive recreation.~~ public lakes and ponds (subject to best management practice requirements); (iii) historic and archaeological sites; (iv) paths and trails – including footpaths, biking or hiking paths, and horse trails (of a permeable material only); (v) passive recreation – limited to hiking, biking, horseback riding, picnicking, camping, and wildlife viewing; (vi) silviculture – as required to care for forests (limited to forest preservation and tree planting; limited tree clearing and clearing of invasive species; tree trimming and pruning; and removal of individual trees; subject to appropriate best management practice requirements); (vii) planting native vegetation (subject to appropriate best management practice requirements); and (viii) conservation – including stream restoration projects, facilities and activities; Adopt-A-Stream programs; scientific, nature and archaeological studies; and education programs.

The Owner may reduce the 50-foot management buffer, which is deemed “flexible” by the Revised General Plan, in selected areas within the Property to no less than 25 feet in width and by no more than a cumulative total of 1 acre within the Property, ~~provided that the Owner shall compensate for any such buffer reduction by planting an area equivalent to such buffer reduction with deciduous and evergreen native plant species, selected in consultation with the County’s Urban Forester, at a rate of 250 seedlings per acre within deforested areas of the 25-foot or greater reduced buffer, the~~ Land disturbance in accordance with the reduced buffers may occur at such time as a comparably-sized adjacent or downstream portion of the Reforestation Area, as described in paragraph J below, is implemented to mitigate potential adverse impacts of the proposed 50-foot management buffer, and/or the floodplain. Such plantings may be concentrated, dispersed or evenly distributed within such areas at the Owner’s discretion in consideration of the location of planned improvements, infrastructure and existing vegetation. Where such plantings are concentrated, the planting rate shall not exceed 1,000 seedlings per acre. The plantings shall be installed prior to occupancy of the areas adjacent to the reduced buffers. reductions on other River and Stream Corridor Resource elements. The provision of the uses allowed within the 50-foot management buffer, such as, but not limited to, stormwater management facilities, utilities and trails as identified above, shall not constitute reductions of the 50-foot management buffer.

I. Wetlands Mitigation

For any wetland ~~and stream~~ impacts on the Property ~~determined to be unavoidable in conjunction with the permitting process and are~~ caused by the Owner’s development of the Property pursuant to this Application (ZCPA 2007-0005), which cannot be avoided and which were not included as part of approved wetland ~~permit~~ permits issued prior to the approval of this

Application (ZCPA 2007-0005), the Owner shall provide wetland mitigation in the following ~~priority order, singularly or in any combination, subject only to approval of the Army Corps of Engineers and the Virginia Department of Environmental Quality:~~ (1) onsite, (2) within the Broad Run Watershed of the Transition Policy Area, (3) within the Broad Run Watershed outside of the Transition Policy Area but within Loudoun County, and (4) within Loudoun County, ~~subject to approval of.~~ If no such areas are available and approvable by the Army Corps of Engineers and the Virginia Department of Environmental Quality. ~~If no such areas are available within Loudoun County as verified by County staff,~~ the Owner shall be permitted to provide wetland mitigation outside of Loudoun County.

I. Broad Run Reforestation

The Owner will implement the reforestation program contained in the “Conceptual Compensatory Mitigation Plan, Loudoun Valley Villages” (the “Mitigation Plan”) dated February 1, 2008, and prepared by Williamsburg Environmental Group, Inc., within the portion of the Broad Run floodplain and drainage ways depicted on the CDP as “Reforestation Areas”, which includes approximately 35 acres. The Owner will ensure that the implementation of the reforestation program will include the following: (1) native deciduous species other than green ash and Cornus florida, (2) initial stocking rates sufficient to maintain a rate of at least 400 stems per acre, pursuant to the monitoring conditions of the Army Corps of Engineers and Virginia Department of Environmental Quality permits, and (3) tree protection measures, such as but not limited to, safety fencing outside of the critical root zone of trees to be preserved and tree root trenching. The implementation of the reforestation plantings will be done in phases. The Reforestation Areas located within or immediately adjacent to the Land Bays identified on the CDP will be planted prior to bond release for each applicable Land Bay. All reforestation activities within the limits of the proffered Broad Run Stream Valley Park will be coordinated with the Department of Parks, Recreation and Community Services. Subsequent amendments of the Mitigation Plan, as may be approved by the Department of Building and Development, the Virginia Department of Environmental Quality and the Army Corps of Engineers, shall not require the approval of a zoning concept plan amendment.

VIII. HERITAGE RESOURCES

A. Archeological Studies

The Applicant has submitted to the County Phase I archeological studies of the Property. When the Phase I studies recommend a Phase II study for sites located in an area(s) proposed for development, the Applicant shall have a Phase II study of said sites conducted prior to the approval of a grading plan or site plan, whichever is first in time, for the affected site. Similarly, if the Phase II study recommends a Phase III study for sites located in an area(s) proposed for development, the Applicant shall have a Phase III study conducted prior to the approval of a grading plan or site plan, whichever is first in time, for the affected site. All artifacts found in the Phase III study shall be cleaned, inventoried and curated, in a location selected by the County, according to the guidelines developed by the Virginia Department of Historic Resources. The Applicant shall not be required to conduct a Phase II or a Phase III study of sites located in areas to remain undisturbed; however, the Applicant agrees to cooperate in good faith with the County and, upon the request of the County, shall provide the County reasonable access to such sites for the first six months following the approval of this application in order for the County to study such sites. The Applicant reserves the right to modify the location of any improvements contemplated by the CDP for the purpose of accommodating the recommendations of said studies.

D. Site 44LD782

Site 44LD782 is located partially within a 50-foot management buffer area on the east side of Land Bay 3a (see Sheet 4 of the CDP). The Phase I archeological report done for this area indicates that this site may contain the remains of 19th century tenant and/or slave houses. Prior to the issuance of the first grading ~~permits~~permit for Land Bay 3a, the Owner shall delineate the limits of this site with a protective four-foot (4') high welded-wire fence attached to metal posts in order to avoid disturbance. In the event the development of Land Bay 3a intrudes into this site, such intrusion shall be minimized and the procedures outlined in paragraph VIII.A above shall be employed.

The undersigned hereby warrant that all owners with a legal interest in the Property have signed this Proffer Statement, that they, together with the others signing this document, have full authority to bind the Property to these conditions, and that the Proffers are entered into voluntarily.

Owner and Applicant

LOUDOUN VALLEY ASSOCIATES, L.P.
a Virginia Limited Partnership

BY: Toll VA GP Corp.
a Delaware corporation
General Partner

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____)

) to-wit:

COUNTY/CITY OF _____)

The foregoing Proffer Statement was acknowledged before me this _____ day of _____, ~~2008~~, 2009, by _____, as _____ of Toll VA GP Corp., the General Partner of Loudoun Valley Associates, L.P.

Notary Public

My Commission Expires: _____

Owner

TOLL VA, L.P.

a Virginia Limited Partnership

BY: Toll VA GP Corp.
a Delaware corporation
General Partner

By: _____(SEAL)

Name: _____

Title: _____

STATE OF _____)

) to-wit:

COUNTY/CITY OF _____)

The foregoing Proffer Statement was acknowledged before me this _____ day of _____, ~~2008~~2009, by _____, as _____ of Toll VA GP Corp., the General Partner of Toll VA, L.P.

Notary Public

My Commission Expires: _____

EXHIBIT A

LOUDOUN VALLEY ESTATES II

ZCPA PLANS

EXHIBIT B

LOUDOUN VALLEY ESTATES II **ZONING ORDINANCE MODIFICATION**

The following modified section of the Revised 1993 Zoning Ordinance applies to the development of the PD-CC(CC) area, Land Bay 4R:

1. PD-H DISTRICT COMMERCIAL AREA BUFFER MODIFICATION

Zoning Ordinance Requirement to be Modified: PD-H Planned Development Housing District

~~“Section 4-110—Site Planning-Internal Relationships. (J) Planned shopping centers and convenience establishments adjacent to single family residential, agricultural residential districts shall provide a permanent open space buffer at least seventy five (75) feet in width with a Type 3 Buffer Yard. Other nonresidential uses in such perimeter areas shall provide the yards required by Section 4-305(B)(2) or Section 4-505(B)(2), as applicable and at least fifty (50) feet of the required yards shall be devoted to a permanent open space buffer with a Type 3 Buffer Yard.”~~

Proposed Modification

Maintain a minimum 25-foot open-space buffer with, as applicable, enhanced Type 3 front yard plantings (3 canopy trees, 3 understory trees, 20 shrubs and 4 evergreen trees per 100 lineal feet) or enhanced Type 3 side/rear yard plantings (2 canopy trees, 5 understory trees, 20 shrubs and 6 evergreen trees per 100 lineal feet) for the perimeter areas of Land Bay 4R adjacent to residential land bays.

2. PD-CC(CC) DISTRICT YARD MODIFICATION

Zoning Ordinance Requirement to be Modified: PD-CC Planned Development Commercial Center

~~“Section 4-205—Lot Requirements. (C) Yards. The following perimeter yard minimums shall be provided for each type of commercial center. (2) Adjacent to Agricultural and Residential Districts and Land Bays Allowing Residential Uses. (All Centers) No building, parking, outdoor storage, areas for collection of refuse or loading area shall be permitted closer than (100) feet to any agricultural districts, any existing or planned residential district, or land bays allowing residential uses. No parking, outdoor storage, areas for collection of refuse or loading space~~

~~shall be permitted in areas between buildings and such agricultural districts, existing or planned residential districts, or land bays allowing residential uses where such uses or areas are visible from said agricultural and residential areas."~~

Proposed Modification

~~Maintain a minimum 25-foot open-space buffer with, as applicable, enhanced Type 3 front yard plantings (3 canopy trees, 3 understory trees, 20 shrubs and 4 evergreen trees per 100 lineal feet) or enhanced Type 3 side/rear yard plantings (2 canopy trees, 5 understory trees, 20 shrubs and 6 evergreen trees per 100 lineal feet) for the perimeter areas of Land Bay 4R adjacent to residential land bays in order to screen any parking, outdoor storage, areas for collection of refuse or landing space located between buildings and the residential areas where such uses are visible from the residential areas.~~

3. PD-CC(CC) DISTRICT YARD MODIFICATION

Zoning Ordinance Requirement to be Modified: PD-CC Planned Development Commercial Center

~~"Section 4-205 Lot Requirements. (C) Yards. The following perimeter yard minimums shall be provided for each type of commercial center. (1) Adjacent to Roads. (b) Community Center (CC). No building, parking, outdoor storage, areas for collection of refuse, or loading area shall be permitted closer than (35) feet to any road right of way, except as provided in Section 4-206(E). No parking, outdoor storage, areas for collection of refuse or loading space shall be permitted in areas between buildings and streets where such uses are visible from any road."~~

Proposed Modification

~~Maintain a minimum 25-foot yard adjacent to roads on the perimeter of the PD-CC district with enhanced Type 3 front yard plantings (3 canopy trees, 3 understory trees, 20 shrubs and 4 evergreen trees per 100 lineal feet) in order to screen any parking, outdoor storage, areas for collection of refuse or landing space located between buildings and the perimeter roads where such uses are visible from the roads.~~